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**DISTRICT IV**

December 23, 2020

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You are hereby notified that the Court has entered the following opinion and order:

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2019AP932-CRNM      State of Wisconsin v. Michael R. Jones (L.C. # 2016CF491)

Before Graham, J.<sup>1</sup>

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Attorney Vicki Zick, appointed counsel for Michael Jones, has filed a no-merit report and a supplemental no-merit report seeking to withdraw as appellate counsel pursuant to WIS. STAT.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

RULE 809.32 and *Anders v. California*, 386 U.S. 738 (1967).<sup>2</sup> Jones was sent a copy of the report and the supplemental report and has not filed a response. Upon consideration of the report, the supplemental report, and an independent review of the record, I conclude that there is no arguable merit to any issue that could be raised on appeal. Accordingly, I affirm.

Jones was charged with substantial battery, which is a felony, misdemeanor battery, and disorderly conduct, each as an act of domestic abuse. According to the criminal complaint, all three charges arose out of an incident in which Jones assaulted the victim, causing her serious injuries.

The parties entered into a plea agreement under which the State agreed to dismiss the felony charge and recommend that Jones participate in the first offenders program. In exchange, Jones agreed to plead guilty to the remaining two misdemeanor charges. Consistent with the plea agreement, the felony charge was dismissed, Jones pled guilty to the misdemeanor charges, and the court referred Jones to the first offenders program. The court withheld a finding of guilt pending the outcome of Jones's participation in the first offenders program.

Jones was subsequently terminated from the first offenders program because he picked up additional charges in a separate case. As a result, the circuit court held an adjudication and sentencing hearing in the instant case and imposed sentences. Specifically, the court sentenced Jones to six months of incarceration on the misdemeanor battery charge and two months of

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<sup>2</sup> The no-merit report addresses whether the circuit court properly exercised its sentencing discretion. The supplemental no-merit report, filed in response to this court's October 13, 2020 order, addresses additional issues.

incarceration on the disorderly conduct charge. The court imposed the sentences consecutive to one another and to any other sentence.

The supplemental no-merit report first addresses whether Jones knowingly, intelligently, and voluntarily waived his right to a preliminary examination. I agree with counsel that there is no arguable merit to this issue. First, the record shows that Jones made a knowing, intelligent, and voluntary waiver of his right. Second, Jones's guilty pleas waived claims relating to the preliminary examination. A guilty plea waives "nonjurisdictional" defects, *see State v. Kelty*, 2006 WI 101, ¶18, 294 Wis. 2d 62, 716 N.W.2d 886, and "no procedural defect of any sort at the preliminary hearing affects the circuit court's jurisdiction," *see State v. Webb*, 160 Wis. 2d 622, 635, 467 N.W.2d 108 (1991).

The supplemental no-merit report next addresses whether Jones's guilty pleas were knowing, intelligent, and voluntary. I agree with counsel that there is no arguable merit to this issue. With one exception I discuss below, the circuit court's plea colloquy complied with the requirements of WIS. STAT. § 971.08 and *State v. Brown*, 2006 WI 100, ¶35, 293 Wis. 2d 594, 716 N.W.2d 906. The court also personally established that Jones understood that, if he did not successfully complete the first offenders program, he would be sentenced and could receive up to the maximum penalties as a result of his guilty pleas.

The exception to the circuit court's compliance with WIS. STAT. § 971.08 and *Brown* is that the circuit court did not personally establish that Jones understood that the court was not bound by the parties' plea agreement or the prosecutor's recommendation. However, because the court ultimately accepted the plea agreement and the prosecutor's recommendation, there is no arguable merit to pursuing plea withdrawal on this basis. *See State v. Johnson*, 2012 WI App

21, ¶¶10-13, 339 Wis. 2d 421, 811 N.W.2d 441 (explaining that the circuit court’s failure to advise the defendant that the court was not bound by the plea agreement did not affect the validity of the defendant’s plea when the defendant received the benefit of the agreement); *State v. Wollenberg*, 2004 WI App 20, ¶13, 268 Wis. 2d 810, 674 N.W.2d 916 (“The court followed the parties’ joint recommendations, and under such circumstances we do not allow a defendant to cry foul on appeal.”).

The supplemental no-merit report next addresses whether the circuit court’s failure to make an express finding of guilt on the record at the adjudication and sentencing hearing creates an appealable issue. I agree with counsel that it does not. Given the unambiguous judgment of conviction and sentences imposed, it is clear that the circuit court found Jones guilty of the misdemeanor battery charge and the disorderly conduct charge.

Finally, the no-merit report addresses whether the circuit court erroneously exercised its sentencing discretion. I agree with counsel that there is no arguable merit to this issue. The circuit court discussed the required sentencing factors along with other relevant factors, and the court did not rely on any inappropriate factors. *See State v. Gallion*, 2004 WI 42, ¶¶37-49, 270 Wis. 2d 535, 678 N.W.2d 197. I see no other arguable basis for Jones to challenge his sentence.

This court’s review of the record discloses no other potential issues.

Therefore,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that Attorney Vicki Zick is relieved of any further representation of Michael Jones in this matter. *See* WIS. STAT. RULE 809.32(3).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*